

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. Nos.311/Ind/2020
(Assessment Years: 2013-14)

M/s. Reliable Global Venture Pvt. Ltd. (Previously known as M/s. Rehbar Holding & Finance Pvt. Ltd.) C/o S V Agrawal & Associates Dadi Dham, 24, Joy Builders Colony, Near Rafael Tower, Old Palasia, Indore (M.P.)	Vs.	The ITO-4(1), Bhopal (M.P.)
PAN No. AACCR4047D		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Agrawal, CA
Respondent by :	Shri Harshit Bari, Sr. DR

Date of Hearing	19.08.2021
Date of Pronouncement	30.09.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 07.09.2019 passed by the Ld. CIT(A)-2, Bhopal (M.P.) arising out of the order dated 29.03.2016 passed by the ITO, Ward-4(1), Bhopal under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2013-14 whereby and whereunder the addition of Rs. 50,87,000/- made by the Assessing Officer under Section 68 of the Act has been confirmed by the First Appellate Authority.

- 2 -

2. We have heard the respective parties and also perused the relevant materials available on record.

3. The brief facts leading to the case is this that the assessee is an investment company maintaining mercantile system of accounting filed its return of income for A.Y. 2013-14 on 31.01.2014 showing loss of Rs.(-) 1,71,602/-. The case was selected through CASS for scrutiny, notice under Section 143(2) dated 04.09.2014 was issued and served upon the assessee. The assessee is a private limited company engaged in the business of financing. During the year under consideration the company has shown income from rent only. Upon perusal of the audited report and Profit & Loss Account of the company it was noticed that the income from business shown as at Rs. NIL and only source of income of the assessee was rental income. As per 'Note 3' of the balance sheet under the head unsecured loan it transpired that the assessee has shown amount of Rs. 5,44,28,539/- as unsecured loan from body corporate. Such advance was received by the assessee on the following parties:

<i>S. No.</i>	<i>Name of the parties</i>	<i>PAN</i>	<i>Amount [in Rs.]</i>
1.	<i>M/s. Navyug Vinimay Private Limited</i>	<i>AACCN0408N</i>	<i>18,20,000</i>
2.	<i>M/s. Vardhan Distributors Private Limited</i>	<i>AACCV9659H</i>	<i>12,67,000</i>
3.	<i>M/s. Azzasr Trading Private Limited</i>	<i>AAKCA3114C</i>	<i>15,00,000</i>
4.	<i>M/s. Siddhi Commodeal Private Limited</i>	<i>AAMCS5478F</i>	<i>5,00,000</i>
	Total		50,87,000

4. The AO finalized the assessment upon making addition of Rs. 50,87,000/- to the total income of the appellant by holding failure on the part of the appellant to establish the identity, creditworthiness of the parties and genuineness of the transaction entered into with these parties. While making addition the Ld. AO observed as follows:

“7.1.1 As per ‘Note 3’ of the balance sheet under the head unsecured loan, the assessee has shown amount of Rs. 5,44,28,539/- from body corporate. Vide notice U/s 142(1) of the Income Tax Act, 1961 issued to the assessee on 15.02.2016 the assessee was categorically asked to establish the identity and genuineness and creditworthiness of transactions. The assessee was required to make the requisite compliance by 19.02.2016. However, the assessee has not filed any reply not sought further time for making compliance in this regard. Perusal of records reveals that the assessee has filed confirmation in the shape of list of companies from unsecured loan received from the following body of corporate. Which is reproduced as under:-

Sl. No.	PAN No. & Name of the Assessee	Address of the Assessee	Amount (in Rs.)			Interest Paid	Balance (in Rs.)
			Cheque No. & Date	Addition	Reduction		
Advance from Related Parties:			Op. Balance	5,87,83,303/-			
1.	AACCR5954K M/s Reliable Smart City Limited	A-6, Reliable House, Kohe-Fiza, Bhopal	101412 dtd. 03.04.12		15,00,000/-		
			101420 dtd 10.09.12		15,00,000/-		
			101423 dtd 09.10.12		10,00,000/-		
			789618 dtd 03.11.12		5,00,000/-		
			172725 dtd 12.11.12	1,001,000/-			
			Total:-	5,88,83,303/-	45,00,000.0	Nil	5,43,83,303/-
			Op. Balance	8,236.35/-			
2.	AAACI6780Q M/s Reliable Consumer Products Pvt. Ltd	A-6, Reliable House, Kohe-fiza, Bhopal	Neft dtd 12.11.12	1,65,000/-			
			101431 dtd. 18.03.13		1,28,000/-		
			Total-	1,73,236.35	1,28,000/-	Nil	45,236.35
			Grand Total:				5,44,28,539.35
Advance from Others:							
1.	AAKCA3114C M/s Azzasr Trading Pvt. Ltd	19, Madan Mohan Burman Street Kolkata - 700007	RTGS. dtd. 08.10.12	15,00,000/-			
			Total:	15,00,000/-		Nil	15,00,000/-

2.	AACCN0408N M/s Navyug Vinimay Pvt. Ltd.	5/4, Clive Row, 4 th Floor, Room No. 109, Kolkata- 700001	RTGS dtd 05.09.12	13,13,000/-			
			RTGS dtd 08.09.12	5,07,000/-			
			Total:	18,20,000/-			18,20,000/-
3.	AAMCS5874F M/s. Siddhi Commodeal Pvt. Ltd.	6/A, Rabindra Sarani Ground Floor, Kolkata- 700001	RTGS dtd. 17.11.12	5,00,000/-			
			Total:	5,00,000/-			5,00,000/-
4.	AACCV9659H M/s. Vardhan Distributors Pvt. Ltd.	Daya Plaza, 1 st Floor, 8 T N Mukherjee Road, New Delhi Road, Chowmatha, Dankuni, Kolkata- 712311	RTGS dtd. 17.09.12	12,67,000/-			
			Total:-	12,07,000/-			12,67,000/-
			Grand Total:				50,87,000/-

7.1.2 *It would be pertinent here to mention that the assessee has not filed any details in respects of credits in the names of above companies shown under “Advance from others” and therefore it follows that the assessee has nothing to say in the matter.*

7.1.3 *I have very carefully gone through the above facts and noticed that the assessee has not been able to furnish necessary details/evidence to establish identity and creditworthiness of the company and genuineness of transactions. Thus the assessee has failed to offer explanation about the nature and source in respect of aforesaid sum credited to his books of account during the subject year. Accordingly, I add a sum of Rs. 50,87,000/- under section 68 of the Income Tax Act, 1961. Penalty proceedings initiated for furnishing inaccurate particulars of income/concealing the particulars of income*

Addition of Rs. 50,87,000/-”

In appeal the First Appellate Authority confirmed the said addition.

Hence, the instant appeal before us.

5. The following details were submitted by the assessee before the Ld. AO to substantiate the identity, creditworthiness of the parties and genuineness of the said transaction made between the parties:

<i>S. No.</i>	<i>Particulars</i>	<i>Page No.</i>
1	<i>Navya Vinimay P Limited (AACCN0408N) of Rs. 18,20,000/-</i>	
1.1	<i>Copy of account of above party in the book of the assessee company</i>	1
1.2	<i>Confirmation of the party duly signed</i>	2
1.3	<i>Copy of acknowledgement of Income Tax return as filed</i>	3
1.4	<i>Copy of Master Record and Signatory Details as downloaded from the site of the Registrar of Companies</i>	4
1.5	<i>Copy of Certificate of Incorporation</i>	5
1.6	<i>Information by Auditor to the Registrar in form No. 23B</i>	6 to 9
1.7	<i>Copy of Return of Allotment</i>	10 to 13
1.8	<i>Particulars of Appointment of Managing Director in Form No. 32</i>	14 to 19
1.9	<i>Copy of Filing of Resolution and Agreements to the Registrar in form MGT-14</i>	20 to 24
1.10	<i>Form for Filing of Annual return by the company in Form No. 20B</i>	25 to 30
1.11	<i>Copy of Form for filing of Balance Sheet and other documents with the Registrar in Form No. 23AC</i>	31 to 41
2	<i>Vardhnan Distributors P Limited (AACCV9659H) of Rs. 12,67,000/-</i>	
2.1	<i>Copy of account of above party in the book of the assessee company</i>	42
2.2	<i>Confirmation of the party duly signed</i>	43
2.3	<i>Copy of Master Record and Signatory Details as downloaded from the site of the Registrar of companies</i>	44
3	<i>Azzasr Trading P Limited (AAKCA3114C) of Rs. 12,67,000/-</i>	
3.1	<i>Copy of account of above party in the book of the assessee company</i>	45
3.2	<i>Confirmation of the party duly signed</i>	46 & 47
3.3	<i>Copy of Master Record and Signatory Details as downloaded from the site of the Registrar of Companies</i>	48
3.4	<i>Certificate of Incorporation as issued by ROC, West Bengal on 21-12-07</i>	49
3.5	<i>Copy of Article of Association</i>	50 to 56
3.6	<i>Notice of change of address in Form No. 18</i>	57 & 58
3.7	<i>Particulars of appointment of Managing Directors/ directors in Form No. 32</i>	59 to 62
3.8	<i>Copy of Memorandum of Association</i>	63 to 68

4	Siddhi Commodeal P Limited (AAMCS5874F) of Rs. 5,00,000/-	
4.1	Copy of account of above party in the book of the assessee company	69
4.2	Confirmation of the party duly signed	70 & 71
4.3	Copy of acknowledgement of Income Tax return as filed	72
4.4	Copy of Master Record and Signatory Details as downloaded from the site of the Registrar of Companies	73
4.5	Copy of Certificate of Incorporation	74
4.6	Copy of Form No. 1 in respect of Application and declaration for incorporation of a company	75 to 83
4.7	Copy of Articles of Association	84 to 91
4.8	Copy of Information to the Registrar by the Company for appointment of Auditor in Form No ADT-1	92 to 94
4.9	Copy of Memorandum and Articles of Association	95 to 102
4.10	Copy of an application for appointment of Managing directors/director in Form No. 32	103 to 106
4.11	Copy of a notice of change of address in Form No. 18	107 & 108
4.12	Copy of filing of Resolutions and Agreements to the Registrar in Form No. MGT 14	109 to 112
4.13	Copy of an Information by the Auditor to the Registrar in Form No. 23B	113&114

6. A Remand report was called for by the Ld. CIT(A) from the Ld. AO on the basis of the reply filed by the assessee in appeal. The crux of the said Remand Report is this that the notice under Section 133(6) dated 09.01.2018 one sent to M/s. Navyug Vinimay P. Limited was returned back with the remarks of the Post Office as no company found on the given address. The postal remark on “insufficient address and addressee moved not known” was given by the Post Office on the notice sent to M/s Siddhi Commodeal Pvt. Ltd. returned to the sender. In respect of M/s. Azzase Trading company the address could not be located as also remarked by the Postal Department while returning the letter to the sender. Though the letter was served upon the M/s. Vardhman Distributors Pvt. Ltd. no reply was received from the said company as the observation made be the Ld. AO in the Remand Report as asked for by the Ld. CIT(A). Since none attended on

behalf of those companies the enquiry to examine third party or verify the genuineness or creditworthiness of the loan providers could not be done and the loan providers have been found to be fake and not in existence.

7. It appears from the records that the assessee received loans from all the parties through account payee cheques. Confirmation in respect of loans as received by the assessee was also obtained and placed before the Ld. CIT(A). The PAN of loan creditors, the copy of Income Tax Return, the Bank statement, Master records and balance sheet of those parties were duly placed before the Ld. CIT(A). Thus, the assessee has properly discharged its onus by providing the identity, creditworthiness and genuine of the unsecured loans as received.

8. While confirming the addition made by the Ld. AO relying upon the Remand Report the Ld. CIT(A) observed that the investor companies has not established the source of funds from which the investment was ultimately made. Further that he has relied upon a judgment passed in the matter of NRA Iron & Steel Pvt. Ltd. (Arising out of SLP (Civil) No. 29855 of 2018) and came to the finding that the onus to establish the creditworthiness of the investor companies was not discharged by the assessee; the entire transaction made in that particular matter seemed bogus and lack credibility. The Ld. AO though initiated enquiry but was not been able to proceed further since no one appeared on behalf of the investor companies and, therefore, finally the addition was confirmed.

9. In regard to the contention of Revenue that the assessee has to prove the source of loan, the assessee submitted that it is required to prove the

source of loan only and not the source of source. In support of this contention following judgments were placed on record before the First Appellate Authority:-

“

<i>S.No.</i>	<i>Name of the decisions</i>	<i>Reference</i>
1	<i>ACIT vs. India Tyre House</i>	<i>72 TTJ 316 (Gauhati Bench)</i>
2	<i>Rammanohar Singh vs ACIT</i>	<i>009 DTR 270 (Jabalpur Bench)</i>
3	<i>S K Jain vs ITO</i>	<i>002 SOT 579 (Agra Bench)</i>
4	<i>Nemichand Kothari vs CIT</i>	<i>264 254 (Gauhati)</i>
5	<i>Orbital Communication (P) Ltd.</i>	<i>327 ITR 560 (Delhi)</i>
6	<i>Dwarkadhish Investment (P) Ltd.</i>	<i>330 ITR 298 (Delhi)</i>

”

Apart from that the judgment on the same issue as passed by the Hon'ble Indore Bench and the Jurisdictional High Court were also placed on record. We have considered the judgments mentioned above and find substance in appellant's case.

10. Further contention of the appellant is that there was clear lack of enquiry on the part of the AO. Once the assessee has furnished all the materials as mentioned above in such eventuality no addition can be made under Section 68 of the Act. The assessee has further relied upon the judgment passed by the Hon'ble Mumbai Bench in the case of Fancy Wear vs. ITO, Ward-24(3)(1), Mumbai reported in, (2017) 167 ITD 621 (Mumbai). We have further considered the said judgment. We find that it has been held by ITAT that non service of notice does not conclusively prove the non-genuineness of a transaction. Thus, the finding of the Ld. CIT(A) is not proper.

11. In the instant case by producing various documents the appellant had proved that balance of convenience was in its favour. Considering the

- 9 -

entire aspect of the matter we find no rational for sustaining the addition of Rs. 50,87,000/- made to the total income of the assessee on account of advance received from these parties solely on the reason that notices issued under Section 133(6) of the Act either not served or no reply was received in response to such notices. Moreso, the appellant by filing ample documentary evidences sought to justify the identity and creditworthiness of the parties and genuineness of the transactions as entered into with these parties. It seems that the assessee satisfactorily discharged its primary onus cast upon it under Section 68 of the Act. Hence, the addition of Rs. 50,87,000/- as made to the total income of the appellant under Section 68 of the Act on account of advance received from parties is not sustainable and, thus, deleted. Hence, assessee's appeal is allowed.

12. In the result, the appeal filed by the assessee is allowed.

This Order pronounced in Open Court on 30/09/2021

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER
Ahmedabad; Dated 30 /09/2021
TANMAY, Sr. PS

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Indore